

STATE OF WASHINGTON

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OFFICE OF

INSURANCE COMMISSIONER

BULLETIN

NO. 82 - 6

July 21, 1982

SUBJECT: Investment in a Participation Loan Agreement  
by a Domestic Insurer

A recent examination of one of our domestic insurers disclosed an investment in a group of participating loans that were not "senior" or "first liens" as contemplated under RCW 48.13.020(b)

The type of loan in question has an insurer participating with another party (more often a bank) in loans typically non-residential. Under the terms of the agreement, the insurer has the bulk of the participation and the bank the smaller portion. A common participation has the insurer take 80% of the loan, the bank 10%, with a 10% down payment.

The problem with the participating loans in question arise over the ratable sharing provision of the agreement which provides that in the event of a sale the proceeds will be shared ratably. This provision clearly does not put the insurer ahead of the bank as the proceeds are being shared rather than the insurer receiving the full amount of its investment before the bank receives any of its participation.

RCW 48.13.020(b) provides "that this section shall not prevent participation by an insurer in a mortgage loan if the insurer holds a senior participation in such mortgage or deed of trust giving it substantially the rights of a first mortgage as of its interest in that loan."

You are hereby advised that effective August 1, 1982, all participating loans entered into by a domestic insurer must be written in such fashion as to give the insurer an "unqualified senior position" in such loan. A senior position is such that it will permit the insurer, in the event of the sale of the property, to recover its investment prior to the other party sharing in the proceeds.

Participating loans consummated prior to August 1, 1982, will be permitted to be taken as an admitted asset for annual statement reporting purposes.

Any participating loan agreements entered into subsequent to August 1, 1982, that contains a ratable sharing provision is to be treated as a non-admitted asset for annual statement purposes.

DICK MARQUARDT

Insurance Commissioner